Washington Law Review

Volume 25
Number 4 *Annual Meeting of the Washington State Bar Association*

11-1-1950

Report of Committee on New Supreme Court Rules

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handle it. We can secure publicity of a lot of information though public firms.

We believe this Committee will have very good effect upon the young lawyers because it will renew their knowledge of what position the lawyers should hold in the community, and it will give them a chance to go out and do the job for the whole association.

Thank you very much.

Report of Committee on New Supreme Court Rules

By Will L. Lorenz

It is getting rather late. Also, it is getting very hot.

I thought as I left my chair of the remarks made by the young boy in the third grade. He had just been called by his mother on the first day of the school year. When he realized after he awakened what a horrible day it was, he clasped his hands, looked up at the ceiling, and said, "Oh, Lord, how I hate to get up."

That is how I feel now, since it is so late in the afternoon, and we have other things to take care of.

I might say, with your indulgence, I have prepared a rather formal talk. I see that the note today is informality rather than formality I was originally told I had half an hour, which then seemed to me was an awfully long time. I prepared this. I had my wife check it. I assure you—if someone should ever read it—there are no split infinitives. There are no dangling phrases. But in view of the fact that the Supreme Court rules have not been published as yet, I would much rather make a few informal remarks, and rather use this epistle I prepared as a guide to my remarks and not as a formal oration.

I do not like to start to talk with an apology As I mentioned before, at the time this spot on the program was arranged, it was hoped that the rules would have been published and you would have had an opportunity to read them and understand them. However, the Supreme Court rules have been finished and adopted by the Court. They are official, but there are some changes proposed in the Rules of Pleading, Practice, and Procedure and in the General Rules of the Superior Court, and those changes are dependent upon the action of the Judicial Council and the Superior Court Judges Association at this Convention.

I find myself in the somewhat peculiar position of having to speak about the most extensive revision these rules of the Supreme Court have ever undergone, or ever will undergo, yet there isn't a single one of you here, except a few members from the Supreme Court, who have had an opportunity to read them.

I discussed that problem with one of the other members of the local bar a few days ago, and his reply was immediate, and I might say, a little blasphemous. He said, "Hell, Will, you can say anything you damn please and nobody is going to know any different." The only thing, as I look around here, I do see some members of the Supreme Court, so whatever advantage I had in that respect is lost already

Before I discuss any changes specifically made in the rules, it might be well to touch briefly on the rule-making power. The rule-making power has been a divided function. It has been exercised by the Legislature and also by the Supreme Court. It is true that in 1925 the Legislature did pass a law which purportedly gives the Supreme Court the exclusive power to make any changes in the regulation of Appellate Practice and Procedure, but in reality I don't think that was a grant of power. It was rather abandonment by the Legislature of what prerogatives it might have had in that particular field.

Also, as you are aware, there is authority which recites it is an inherent power of the court itself to establish Practice and Procedure in courts.

Our territorial court, I found in doing a little research work, as far back as 1872 recognized this inherent power of the court to regulate not only the procedure of the Supreme Court but also the trial court.

We are aware that the court has exercised that power from territorial days down to the present. But although to a great extent practice today is governed by the court-made rules, nevertheless we still have some forty or fifty odd statutes—and I use that adjective in a loose sense—which purportedly supplement the rules of the Supreme Court.

So we had this happening· We had the development of a body of legislative regulations on the one hand, and a body of court-made rules on the other.

Everyone of you lawyers who has ever handled an appeal knows the doubts and confusion that system has created.

I believe probably the best way to exemplify the troubles the practitioner runs into who tries to take an appeal is to tell you an experience one of the younger lawyers had in one of the provincial counties over on the Coast—I think King—one of the smaller counties.

He said he had a great deal of difficulty in ever getting to the Supreme Court at all. I met him coming out from the courtroom. He had just finished his argument before the Supreme Court. He was an immensely relieved lawyer at the moment—not so much because he had just finished his first argument before the Supreme Court, but because he felt so fortunate because he had unravelled the problem of how to get up there.

He had finally reached the goal of all young lawyers and found a solvent client with a good cause of action. Despite his efforts, justice triumphed and he found it necessary to appeal. He pulled down 18 Washington, Second, and started reading rules. Before he got beyond the fifth rule, he had been referred to more than thirty-five section of the Code. Before he finally got through, he had been referred to almost fifty When he finished reading that, and the two volumes published since then, he had to go to the Code and dig out the statutes. That entailed a search through two volumes, plus the pocket supplements, and the five supplemental volumes for amendments.

Having accomplished this horrendous task, he found himself faced with the greatest problem of all: which of these statutes are superseded in toto by rules, and which aren't; and worse yet, which statutes are only partially superseded?

I think I am safe in saying the principal purpose of this recent revision of the rules by the Supreme Court has been to eliminate much of that tedious work that a practitioner had to engage in before he could figure out how to get to the Supreme Court.

The Court did this as a result of months of tedious work involving an analysis of Washington cases, re-examination of our rules, comparison of our rules with those of every other state in the Union and our territorial possessions. This wasn't just a passing fancy on the part of the Supreme Court. It was the result of much thought and hard work.

First, they examined all rules in the light of our reported cases, with a view toward conforming the rules and the cases. You know, we do have conflicts between our cases in interpretation of the rules.

Secondly, they took every single section of the Code, running from

1716 through 1754, and four sections in Title 11, Volume 4, and Sections 387 through 397 in Volume 2—they took every one of those sections and lifted them bodily out of Remington's, and those still applicable are still included as rules, and for all practical purposes those pages in Remington's are now completely blank. From here on in these rules will cover every step necessary to perfect an appeal. The statutes—they have been altered and made into rules. Some are missing; they have been abrogated entirely They have no application at all. Others have been taken by part of the rules. That was the idea —to eliminate the necessity of looking at the Code in order to perfect an appeal.

As to the publication of the rules. The Rules on Appeal (as the new rules of the Supreme Court will be denominated), the "Rules of Pleading, Practice, and Procedure," the "General Rules of the Superior Courts," the "Code of Ethics," the "Rules for Admission to Practice," and the "Rules for the Discipline of Attorneys" will all be included in a new volume of the Washington Reports.

Last night I saw Chief Justice Simpson and he gave me this volume, which is printed in blank, but this is what it will be. It will be part of the reported system, and will be either 35a or 34a of the Washington Reports, Second Series.

So from here on in every lawyer will have in his library as part of the Reports a complete set of every rule promulgated by the Supreme Court, and this volume will take the place of a good looking secretary, so to speak. Everyone will have one and won't have to look at his neighbor's. It will cost in the vicinity of $3. And the cost of publishing this in pamphlet or booklet form would probably be no less, and the chances of losing such publications are much greater.

In respect to the actual changes which have been made, it would be impossible for me to give you an analysis at such a meeting as this. It would be impossible to discuss minor changes made in the rules. A discussion of the minutiae—changing a word there, and a phrase here—all those minor things which to the practitioner will be just as important as the major changes—have no place here today, because you have not read the rules. You would have to have a copy to compare them, to see what I was talking about. It would be a waste of your time and mine to attempt to discuss cases which have been partially or totally overruled, shall we say, by the changes.

I would like to speak, for your own edificaton, on three or four

major changes in those rules which everyone of you here must be familiar with, particularly those dealing with jurisdictional or mandatory requirements.

The rule on cost bonds: I think under the present statute, 1721, you have to file that within five days of serving or giving notice of appeal. That has been liberalized. Now you have ten days. However, the Court has inserted the word "serve"—serve *and* file—in that particular rule. It will be necessary now on appeal to serve as well as to file, but you do have ten days.

As to the time of taking your appeal, the old thirty-day rule and fifteen-day rule is retained—thirty days after entry of a final judgment or order, and fifteen days from the entry of any other appealable order has remained unchanged. The new rule completely supplants Section 1719 of the Code, which has caused so much confusion. In that respect, the present rule has this provision—rather, it has omitted from the old statute the provision that it is necessary to file your copy of the notice of appeal and your proof of service thereof upon the Clerk of the Superior Court, within five days of the service of the notice of appeal. That, as you know, has caused no end of hardship, ever since a decision some four or five years ago which held that was jurisdictional. Now there is no mention of the five-day period. The rule simply says you must serve and file within thirty days.

It is still mandatory to serve and file the notice, but you have the entire thirty days. Of course, you have to step lively if you are going to take an appeal within the last day or so, because there is no provision for additional time.

So far as other jurisdictional requirements are concerned, the Court gave that matter a great deal of consideration. They have now a special rule which sets up what are the jurisdictional requirements—the giving of notice of appeal; the giving, serving, and filing of an appeal bond; the serving and filing of proposed statement of facts when necessary to consider the questions on appeal. It was deemed necessary to do that because in the old days (we are in the old days right now because the rules are not effective yet as things stand) there wasn't any rule or statute which told us what were the mandatory or jurisdictional requirements. Now we have a rule which is a reminder or warning, whichever you want to call it, to the practitioner starting an appeal.

The Statement of Fact Rule is unchanged, but there is now a pro-

vıso whıch elımınates some of the hardshıps that rule has resulted ın —a provıso that either with permıssıon of the Superıor Court or Chıef Justice of the Supreme Court, one may secure a thırty-day extensıon for the fılıng of the proposed Statement of Facts, upon good cause shown. However, your plea for extensıon must be made wıthın the nınety-day perıod. You can't wait 150 days and then say, "By the way, Judge, I would like an extensıon."

So far as brıefs are concerned, brıefs will be about the same, except the old "Statement of the Questıons Involved" has been elımınated. A lot of lawyers spent an awfully lot of time tryıng to get a faır and square defınıtıon of the ıssues ın the "Statement of Questıons Involved," and, as a matter of fact, so far as the readers of the brıef were concerned, it has not been of too much help. It entailed extra expenses to the client for prıntıng, and so forth. That has been elımınated, and the "Statement of the Case" has been defıned ın the rule so that the practıtıoner will know just what the Court wants ın the lıne of facts ın the brıef.

Just one more rule that ıs of some ımportance, particularly to those who have crımınal practice.

The rule on crımınal appeals (present Rule 12) has been gıven the most sweepıng change of any rule of the Supreme Court. The whole purpose for the change ın that rule was to make provısıons ın crımınal appeals more closely approxımate the rules coverıng cıvil cases. You have a liberalization and modification of the strıct jurısdictional requırements. Provısıons are ıncluded therein for appeals ın forma pauperıs, and the Court has reserved the power to waıve any of the rules ın capital cases, for example.

I thınk those are the most ımportant changes that have been brought about.

I know we still have another ıtem on the agenda thıs afternoon—the Report of the Committee on Unauthoızed Practice of Law—and I feel if I extend my remarks much later I will be properly the number one ıtem on the agenda of that report.

I would like to say ın closıng you will get quite a shock when you pıck up the new rule book and see there are eıghty-four rules—sıxty-four rules on appeal and twenty rules of the Supreme Court, denomınated "Rules Peculiar to the Busıness of the Supreme Court." You will probably thınk there has been a tremendous change, but basıcally, it is the same as it has always been, but under the new

rules there has been a liberalization—there has been a simplification of the entire process, for the purpose of benefiting not the attorney alone, but his poor client, who is going to have to pay for it.

I think when you receive your copy of the new rules, you will agree that purpose has been served.

Thank you.

Report of Committee on Unauthorized Practice of Law
By George E. Mathieu

I have a three-page report. Unless you want me to read it, I won't do so.

I might say in the little town and county mentioned by the last speaker, the Real Estate Board has a practice of electing the "Man of the Year" over there, and with a burning desire to obtain that great honor, I have been active on this Committee. I think due to sufficient late developments my election is practically assured, and it is "in the bag."

I want first to give credit where credit is due, and say that the work I have done on the Committee has been merely that of supervisor, and that the work of the Committee was done by the membership, and I am going to ask the members of the Committee to rise, and I will ask you to give them a round of applause after they have been introduced. If you will please rise and remain standing· Jack Freeman, Spokane; F L. Stotler, Colfax; Alfred McBee, Mount Vernon, Ernest Louis Meyer, Olympia, Horace G. Geer, Tacoma, Lane Morthlund, Yakima; James Leavy, Pasco; James Rolfe, Seattle; Judson Falknor, Seattle; Dean Norman dePender, Spokane; A. B. Stoneman, Auburn.

Perhaps I should have given my report before I asked for a round of applause for them.

I might say at the time of the appointment of this Committee a great deal of the problems confronting us were not perhaps all due to lethargy of the lawyers, but were due in a large measure to the fact that the lawyers were overworked in World War II, and permitted a situation to develop which should have been stopped in normal times. In consequence of that we have endeavored to cover as much ground as we could.

The first step in our program, after a survey of the situation, seemed